

Exhibit 12

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1 IN THE UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF CALIFORNIA

3 PHILIP WONG, FREDERICK CHAUSSY,)

4 and LESLIE MARIE SHEARN,)

5 individually, on behalf of all) Case No. 07-2446

6 others similarly situated, and)

7 on behalf of the general public)

8 Plaintiffs,)

9 vs.)

10 HSBC MORTGAGE CORPORATION)

11 (USA),)

12 Defendants.)

13 The videographic deposition of DAVID

14 GATES, called for examination pursuant to the Rules

15 of Civil Procedure for the United States District

16 Courts pertaining to the taking of depositions,

17 taken before GINA M. LUORDO, a notary public within

18 and for the County of Cook and State of Illinois,

19 at 200 North LaSalle Street, Illinois, on the 11th

20 day of September, 2007, at the hour of 9:02 a.m.

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24 Reported by: Gina M. Luordo, CSR, RPR, CRR

25 License No.: 084-004143

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1 APPEARANCES:

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3 NICHOLS KASTER & ANDERSON, LLP,

4 BY: MR. BRYAN J. SCHWARTZ

5 One Embarcadero Center, Suite 720

6 San Francisco, California 94111

7 (415) 277-7235

8 Representing the Plaintiffs;

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10 LITTLER MENDELSON

11 BY: MS. MICHELLE R. BARRETT

12 650 California Street, 20th Floor

13 San Francisco, California 94108

14 (415) 433-1940

15 Representing the Defendants.

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1 A. Yes. They're expensive, so we try to
2 limit the devices that we have out there because
3 there's a cost for the Blackberry and a cost for
4 the connection, but yes.

5 Q. Do the loan officers, are they given
6 vehicles for traveling to any of these different
7 places?

8 A. No.

9 Q. So am I correct that you, the Mortgage
10 Corp. has no way of knowing where loan officers are
11 working at particular times of day as a general
12 rule?

13 A. Other than picking up the phone and
14 finding out where they are, no.

15 Q. Okay. But you have no way of going back
16 and reconstructing where Philip Wong or Frederick
17 Chaussy or any other loan officer was on a
18 particular day?

19 A. No.

20 Q. So if the -- if the loan officers provide
21 testimony that they spent more than 50 percent of
22 their time working either out of the HSBC Mortgage
23 Corp. offices or out of the HSBC Bank branches or
24 out of the home office, then you have no evidence
25 that could rebut that?

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1 expectations that you set with your customer

2 business.

3 Q. The -- you're aware that loan officers are

4 classified by the company as exempt from receiving

5 overtime?

6 A. Yes.

7 Q. And do you know why that is?

8 MS. BARRETT: Objection. Calls for a legal

9 conclusion.

10 BY MR. SCHWARTZ:

11 Q. You're not going to find it in that

12 document.

13 A. No, I understand that. I'm thinking.

14 Q. Okay.

15 A. I'm just looking through this because I

16 find this to be interesting. They are not paid

17 hourly. They're commissioned employees. As such,

18 we do not have significant oversight over their

19 day-to-day tracking of business. They have their

20 own business plans as this references in

21 Exhibit 10. We help them and support them in their

22 business plans, but we don't -- we really don't

23 require them to be in the office from 9:00 to 5:00

24 because it's not a 9:00 to 5:00 job. It's one of

25 the reasons we provide the life plan and the

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1 which would inform a loan officer that he or she
2 would be compensated as an outside salesperson.

3 A. I don't recall compensated as an outside
4 salesperson, but you would say that they -- I know
5 they noted they're a commissioned employee that's
6 100 percent commissioned. I don't know if
7 that's -- I'm struggling with the fact that -- I
8 don't know because I don't know those specific
9 words, outside salesperson.

10 Q. So conceivably, you could have a loan
11 officer once they've -- after the initial
12 nonrecoverable draw period or salary period, you
13 could have a loan officer who works 80 hours in a
14 week, but doesn't generate any loans and,
15 therefore, doesn't earn any income at all; is that
16 correct?

17 A. Yes.

18 Q. Has there been any change, to your
19 knowledge, in the job duties of loan officers
20 over -- during your time at HSBC Mortgage
21 Corporation?

22 MS. BARRETT: Objection. Overbroad as to the
23 time period. Can you narrow it down? He's been
24 with the company for a very long time.

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1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF C O O K)

4 I, GINA M. LUORDO, a notary public within
5 and for the County of Cook County and State of
6 Illinois, do hereby certify that heretofore,
7 to-wit, on September 11, 2007, personally appeared
8 before me, at 200 North LaSalle Street, Chicago,
9 Illinois, DAVID GATES, in a cause now pending and
10 undetermined in the United States District Court of
11 the Northern District of California, wherein PHILIP
12 WONG, et al. are the Plaintiffs, and HSBC MORTGAGE
13 CORPORATION (USA), et al. are the Defendants.

14 I further certify that the said DAVID
15 GATES was first duly sworn to testify the truth,
16 the whole truth and nothing but the truth in the
17 cause aforesaid; that the testimony then given by
18 said witness was reported stenographically by me in
19 the presence of the said witness, and afterwards
20 reduced to typewriting by Computer-Aided
21 Transcription, and the foregoing is a true and
22 correct transcript of the testimony so given by
23 said witness as aforesaid.

24 I further certify that the signature to
25 the foregoing deposition was not waived by counsel

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1 for the respective parties.

2 I further certify that the taking of this

3 deposition was pursuant to notice and that there

4 were present at the deposition the attorneys

5 hereinbefore mentioned.

6 I further certify that I am not counsel

7 for nor in any way related to the parties to this

8 suit, nor am I in any way interested in the outcome

9 thereof.

10 IN TESTIMONY WHEREOF: I have hereunto set

11 my hand and affixed my notarial seal this 26th day

12 of September, 2007.

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NOTARY PUBLIC, COOK COUNTY, ILLINOIS

19 LIC. NO. 084-004143

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